

Pages 1 - 25

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Laurel Beeler, Magistrate Judge

SOSHA KELLMAN, on behalf of	)	
herself and all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. C 17-06584 LB
	)	
WFM PRIVATE LABEL, L.P., WHOLE	)	
FOODS MARKET CALIFORNIA, INC.,	)	
WHOLE FOODS MARKET SERVICES,	)	
INC. and WHOLE FOODS MARKET	)	
DISTRIBUTION, INC.,	)	
	)	
Defendants.	)	
	)	

---

San Francisco, California  
Thursday, February 4, 2021

**TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING OF  
REMOTE ZOOM VIDEO CONFERENCE PROCEEDINGS**

**TIME 9:48 A.M. - 10:17 A.M. = 29 MINUTES**

**APPEARANCES VIA ZOOM:**

For Plaintiff:

FRANCIS MAILMAN SOUMILAS, P.C.  
1600 Market Street, Suite 2510  
Philadelphia, Pennsylvania 19103

**BY: JAMES A. FRANCIS, ATTORNEY AT LAW**

**(APPEARANCES CONTINUED ON FOLLOWING PAGE)**

Transcribed By: Ana Dub, RMR, RDR, CRR, CCRR, CRG, CCG  
CSR No. 7445, Official U.S. Reporter

**APPEARANCES:** (CONTINUED)

For Plaintiff:

THE GOLAN FIRM  
529 - 14th Street, N.W.  
Suite 914  
Washington, D.C. 20045

**BY: YVETTE Y. GOLAN, ATTORNEY AT LAW**

For Defendants:

BLAXTER BLACKMAN  
601 California Street  
San Francisco, California 94108

**BY: J.T. WELLS BLAXTER, ATTORNEY AT LAW  
BRIAN R. BLACKMAN, ATTORNEY AT LAW**

Thursday - February 4, 2021

9:48 a.m.

P R O C E E D I N G S

---o0o---

**THE CLERK:** Calling Civil Action 17-6584, Kellman, et al. versus Whole Foods Market, Inc., et al.

Counsel, can you please state your appearances.

**MS. GOLAN:** Good morning. This is Yve Golan, counsel for plaintiff.

**THE COURT:** Good morning.

**MR. FRANCIS:** James Francis, also counsel for plaintiff.

**MR. BLACKMAN:** Good morning, Your Honor. Brian Blackman on behalf of the defendants.

**MR. BLAXTER:** Good morning, Your Honor. Wells Blaxter for defendants.

**THE COURT:** Okay. Great. So just pulling -- looking at my notes.

So here's -- here's my reaction to your letter brief. You know, I -- in employment cases, for example, I am pretty open to the plaintiff's approach because, you know, it's just -- it's just too much work, frankly, you know, with the redactions. But in product cases, it's different.

And, you know, I'm -- I'm -- I'm sympathetic to, like, I can't understand things because you robbed me of the context, even if you're right that things are irrelevant. But at the

1 same time, I -- you know, looking at what you've given me, I  
2 don't see why you can't at least -- I know that you talked at  
3 least three times.

4 So I don't mean -- you know, I remember thinking, when I  
5 was a lawyer, I remember seeing Judge Larson do a discovery  
6 dispute and he made the parties go out to the hallway. And I  
7 thought to myself, it's like meet and confer; meet and confer  
8 till you're dead. So I understand the sort of endless  
9 meet-and-confer process seems like it's own special form of  
10 hell.

11 But at the same time, I don't know why it's not reasonable  
12 for the plaintiffs to say, as opposed to all redactions,  
13 you know -- even if they're representative, why can't you --  
14 you know, why can't you give me this stuff. I don't know why  
15 that's unreasonable.

16 And so I'm happy to talk with you about it, but I thought  
17 that Wells Fargo -- or, sorry. "Wells Fargo" -- Whole Foods.  
18 "WF." It's already a long day and it's not even 10 o'clock  
19 yet.

20 I don't know why that's not a reasonable proposal as a way  
21 of addressing this dispute, because I can't -- I can't really  
22 tell that that's unreasonable from the information that you've  
23 given to me.

24 So that's what I would like to propose.

25 **MS. GOLAN:** Yes, Your Honor. Something else I wanted

1 to mention as well as the context being lost. There's -- some  
2 of the redactions were over information that we specifically  
3 requested.

4 So, for instance, concentrations of ingredients. One of  
5 our discovery requests asked for Whole Foods products that were  
6 not labeled as hypoallergenic because we wanted to see there,  
7 for instance, what was the pricing. And we compare the pricing  
8 of Whole Foods products labeled as hypoallergenic and  
9 Whole Foods products not labeled as hypoallergenic. And  
10 Whole Foods's redactions -- Whole Foods just redacted every  
11 product that's not in the complaint, saying that it's -- you  
12 know, it's a different product.

13 And so --

14 **THE COURT:** Okay. So let's talk about the pricing  
15 decision for non- -- so, Mr. Blackman, if that's you. So  
16 what -- you know, so the idea is the harm, you know, the price  
17 premium that gets paid for hypoallergenic products is relevant  
18 to the litigation. And for, you know, similar but products not  
19 branded hypoallergenic, why isn't that relevant?

20 You know, it's -- I mean, you might -- and since it's  
21 already produce -- you know, you're obviously redacting it. So  
22 it doesn't seem that the production of it's particularly  
23 burdensome.

24 And so what's the -- and there's not a sort of an  
25 anticompetitive effect in the same way that there might be in

1 other kinds of, you know, products -- I don't know -- with a  
2 different labeling that might be more attenuated.

3 But why isn't that a reasonable position from the  
4 plaintiffs?

5 **MR. BLACKMAN:** Thank you, Your Honor.

6 The idea that they want information on all products not  
7 labeled hypoallergenic --

8 **THE COURT:** Well, not all products. Would it be all  
9 products, or it would be --

10 **MR. BLACKMAN:** That's what their request says. Their  
11 request says all products not labeled hypoallergenic.

12 And so the process that we used was to use the search  
13 terms, which would limit some of that, but to also review the  
14 documents to see if those products beared any relationship to  
15 this case.

16 So, one, were they a product at issue in this case? If  
17 so, the information was turned over.

18 Two, does the product contain an ingredient that's at  
19 issue in this case? If it does, then we turned that  
20 information over.

21 The ingredient issue is the issue that this Court used to  
22 determine what were similar products and what were not similar  
23 products at the demurrer stage. And so we used that process to  
24 determine what was relevant, what was responsive, and we turned  
25 over all of that information.

1       The idea that we redacted information that they requested  
2       because it went to the formulation, they called out a couple of  
3       those documents to us, noting that they actually had that  
4       information in other documents we had produced. We found that  
5       that was an error, and we corrected it.

6       That's why the approach that we were suggesting,  
7       Your Honor, that let's talk about the documents that are  
8       actually important to your case that you really believe that  
9       you need the information for.

10       They just -- they're not taking the process of going  
11       through those documents to determine what actually is and is  
12       not relevant. They could see a PowerPoint presentation, like  
13       they called out in the letter, and say: This is a document  
14       that's important to us. We think we need it for X and Y  
15       reasons. Here's the information that we think is missing from  
16       here. And we could have an intelligent conversation about it.

17       But instead of doing that, what we're left with is: Just  
18       unredact everything.

19       And Whole Foods does have privacy concerns as to products  
20       that are not at issue here and as to information that is being  
21       disclosed about products that have nothing to do with this  
22       case, that are not applied to the skin. They're not lotions or  
23       shampoos or detergents. But because --

24       **THE COURT:** No, I hear you on that. But I'm sorry.  
25       I'm a little bit at a disadvantage.

1 I'm just pulling up my electronic file. I'm actually  
2 telecommuting today. A lot of times I'm in the office. So I'm  
3 just pulling up some of my notes from the last time. I usually  
4 have this very organized approach where I can flip back to  
5 things that we talked about before.

6 So I am not -- I'm not going to push you on -- so,  
7 you know, all products is different than -- and I know that  
8 similar products isn't necessarily a helpful restriction.

9 But the kinds of products that are labeled hypoallergenic,  
10 it doesn't seem to me to be wrong if there's a request for it  
11 for -- you know, and I can't tell because of the redactions,  
12 but that seems reasonable, non-burdensome.

13 I don't think that there should be, you know, a large  
14 fishing expedition in all products to be able to -- I don't  
15 see -- that seems too attenuated. And, you know, for the  
16 reasons that you've identified, I don't think -- I'm not at  
17 all -- I'm not -- I agree on that point. But I -- but I --  
18 just to the very specific, narrow -- and I don't know what the  
19 requests are.

20 Maybe you guys should meet and -- I know you don't want to  
21 meet and confer more from the plaintiff side when you've done  
22 it three times already. But I don't know why in the  
23 marketing -- well, in the marketing context, because you're  
24 looking at price premiums, why there can't be some something  
25 settled upon that some of those redactions could be unredacted



1 if they're in the universe of products where it is relevant to  
2 an analysis of the price premium. Why is that wrong on my end,  
3 from the defendants' standpoint?

4 **MR. BLACKMAN:** Well, Your Honor, we turned over  
5 documents related to products that are not at issue in this  
6 case if they talked about hypoallergenic testing or if they  
7 talked about hypoallergenic labeling or claims, whether or not  
8 that was actually done.

9 So if they were considering hypoallergenic for the product  
10 and ultimately decided not to use it, we turned over all of  
11 that information.

12 That includes the --

13 **THE COURT:** Right. But the point -- I don't mean to  
14 interrupt you. That's fine, and that's fair, and that's good.  
15 But the -- but what plaintiff's counsel just said is for the  
16 non- -- the products that aren't labeled that way but that  
17 their pricing -- you know, the price premium analysis -- I  
18 mean, you know, I know there are consumer surveys and all of  
19 that.

20 But if I buy the same Neutrogena skin care product and one  
21 is -- or, you know, Walgreens -- I'm not using Whole Foods on  
22 purpose -- but one is, you know, a facial moisturizer that's  
23 branded hypoallergenic and one isn't and they otherwise are  
24 similar products, why isn't that relevant?

25 **MR. BLACKMAN:** Well, because -- we turned over that

1 information. So the information --

2 **THE COURT:** So they said that you didn't, but you're  
3 saying you did.

4 **MR. BLACKMAN:** The analysis that we used was: Does it  
5 have a similar ingredient? Because that is --

6 **THE COURT:** A similar ingredient without regard to  
7 whether it's labeled hypoallergenic?

8 **MR. BLACKMAN:** Exactly.

9 **THE COURT:** Okay. That's fine. That's -- that's --  
10 that's fine. If you make that representation to me, then I  
11 will say to the plaintiffs, from the plaintiff's perspective, I  
12 have to accept it because you can identify areas where, in the  
13 disclosures -- in the production, you know, on the redactions  
14 and the -- in the log where you think that is not true and then  
15 you can discuss it with Wells Fargo [sic].

16 But now I have a representation that that important  
17 information was redacted, and so -- I'm sorry -- was produced,  
18 and so -- and can someone just tell me, what's the volume at  
19 issue here, just strictly from a volume perspective? What are  
20 you guys quarreling about? I mean, I know what you're  
21 quarreling about from an issue perspective, but what's the --  
22 what's the --

23 **MS. GOLAN:** So, so far, there have been about 1,500  
24 documents produced.

25 **THE COURT:** That's not terrible. That's pretty --

1 pretty light.

2 **MS. GOLAN:** And I don't have the number of those  
3 documents as to how many have been redacted.

4 **THE COURT:** So, again, I don't have -- you know, you  
5 know better than I do. I remember -- let's just -- of course I  
6 remember my first, you know, 15,000 documents? That's nothing,  
7 or whatever. So like, yeah, that's a gay moment.

8 I -- you know, as you -- in a world of terabytes where the  
9 information that confronts you is sometimes shockingly  
10 overwhelming, that's the sort of stuff you can plow through.

11 So, you know, and you guys know this, but, you know,  
12 sometimes there are representative categories of things. You  
13 know, you seem to be redacting these issues in these three  
14 places. You may be doing it in 75 places, not just the four  
15 that I've identified for you.

16 But it seems to me that you -- you know, and I -- and it  
17 doesn't -- you know, when I look at -- I mean, when I see  
18 how -- for the lack of context, that's different. I mean,  
19 I think that you guys at least need to talk about it.

20 And a good privilege log or you have the redactions. A  
21 good privilege log, plus redactions, if you really can't tell,  
22 you know, you can give me a representative one. If I can't  
23 tell either, maybe that's -- you know, in a marketing material,  
24 or whatever, in a deck, that's maybe something that we could  
25 agree to pursuant to a protective order. I don't know.

1 But I think at least, you know -- hopefully it's not  
2 confusing and that you -- that you -- they really did redact  
3 stuff that was, you know, completely unrelated and that they  
4 have, in fact, produced information that is, you know, what I'm  
5 going to call the similar product/different claims landscape,  
6 which I do accept.

7 And then I just think that other than that, you know,  
8 it's -- as I'm saying, I don't have your document productions  
9 in front of me. It's really hard to tell about context. But  
10 at least I think you guys need to sort of identify specifically  
11 what you don't like.

12 And I'm not prepared in the products universe to just  
13 wholesale say produce it unredacted, largely for the reasons  
14 that Whole Foods has advanced. So it's just not -- it's  
15 just -- it's not what I do anyway. So -- because it does  
16 matter in a different way, in a different litigation with  
17 different issues at stake where the -- you know, the protective  
18 order has been sufficient to address the privacy. I don't  
19 think that's the case here.

20 So I don't know that I can do much more for you except to  
21 say, you know, try to -- try to at least talk. You know,  
22 pick -- don't bite off more than you can chew in one meeting.  
23 You know, pick some areas, five, whatever; talk about them.  
24 From Whole Foods, see whether a -- like, how much does it  
25 matter? You know, what's the work involved in maintaining the

1 privacy, and do you really care all that much? Especially in  
2 marketing materials.

3 I mean, you make the call that you make the call. And I  
4 don't -- I know the pharmaceutical industry very well, and  
5 that's because that's the work I used to do. So I'm always  
6 analogizing in a label case to my own experience doing labeling  
7 cases in the pharmaceutical context.

8 A lot of times in that context, it really didn't matter.  
9 It may matter to you, but often -- and it may matter more in  
10 just a straight-up label context as opposed to the -- a  
11 compositional context than it does in whatever, you know, the  
12 marketing folks had by way of PowerPoint.

13 And so it's, you know, as Judge Jensen used to say to me:  
14 How much do you really care? And so -- and with that approach,  
15 if you can see your way to producing stuff that you don't  
16 really care about, especially marketing materials, pursuant to  
17 a protective order, it might just be easier on everybody and  
18 reduce the level of anxiety that attaches to redactions in a  
19 straight-up, you know, labels, composition, comps for price  
20 premiums.

21 It sounds like Whole Foods is doing what it's supposed to  
22 be doing and is redacting wholly irrelevant things that don't  
23 have anything to do with this litigation. And as long as  
24 that's happening, and that is the representation, which it is,  
25 then I do accept what Whole Foods tells me about what it's

1 doing.

2 Is there anything else that you wanted to ask or say from  
3 the plaintiff side or the defense side that could  
4 be (inaudible)?

5 **MS. GOLAN:** Yeah. I think it's important to note that  
6 one of the reasons why we have such a small universe of  
7 documents -- only 1,500 documents -- is because we worked  
8 really hard on crafting search terms that would be good at  
9 getting responsive and relevant information. That's how they  
10 were able to take a universe of 41,000 documents and find only  
11 1,500 really that were --

12 **THE COURT:** I appreciate that. That's an excellent  
13 point. So you guys did do a very good job. So that's great.  
14 That's a good observation.

15 **MS. GOLAN:** Well, and the other thing, take, for  
16 instance, Whole Foods' statement as to what products it  
17 considered to be similar. They looked at if there was a  
18 similar ingredient. I think that whether a product is similar  
19 or not depends on its function; a body wash versus a body wash,  
20 for instance.

21 One of the reasons why Rule 34 calls for the production of  
22 documents as they're kept in the ordinary course of business  
23 and, also, I think, one of the reasons why the ESI order in  
24 this case permits redactions only for privilege is to avoid  
25 this mini-trial like this, where plaintiffs are stuck saying:

1 We think it's relevant, but we don't know exactly what it is  
2 because to us it's just a big, giant black box.

3 **THE COURT:** I agree with you on the similar products  
4 analysis. I mean, I do. I think that that's -- the body -- I  
5 use the moisturizer example; you use the body wash example.

6 I don't -- another question I have is: How many products  
7 are at issue here? Do you guys have a spreadsheet of how many  
8 hypoallergenic products are at issue here?

9 You know that I did *Brown v. Hain Celestial*; right? And  
10 at some point we really -- we had the spreadsheet. I mean, I  
11 can't remember. I'm just making it up. But whatever it was,  
12 we had the spreadsheet, and it was more than a hundred, and it  
13 was -- and so I just wondered, have you gotten to that point  
14 yet?

15 **MS. GOLAN:** Your Honor, the number of products at  
16 issue here are a bit more than a dozen. But --

17 **THE COURT:** Okay. So it's not that many. Okay.

18 **MS. GOLAN:** But it's also sometimes difficult to tell  
19 is this product within that list or outside of that list,  
20 because product names are a little bit different sometimes. So  
21 is a shower gel the same thing as a -- is that included within  
22 the bubble bath, for instance? And so there's -- there's some  
23 fuzziness there because --

24 **THE COURT:** It's a dozen products.

25 So going back to Whole Foods, just -- you know, it

1 doesn't -- so the universe is pretty small, and it seems like  
2 the comparables would be pretty small. And I know you've  
3 said -- you've represented that you have produced the  
4 information regarding the comparables.

5 But it can't be that there's so many comparables -- and I  
6 assume that comparables might be tied to a time period too;  
7 right? So it seems that the work -- it doesn't seem that the  
8 burden on you is too much to produce information subject to a  
9 protective order if -- and you may have already done it, and  
10 I think you suggested to me that -- you said to me that you  
11 did. But what the plaintiffs are asking for is -- that's what  
12 they're asking for. And so there ought to be basically the  
13 spreadsheet of the hypo- -- those were the hypoallergenic  
14 claims, representations, and then the equivalent products.

15 And for those, I think that the redactions -- I don't see  
16 any reason why those have to be redacted compositionally,  
17 pricewise or otherwise. I think it's just -- it's -- it's not  
18 that big a deal; and it does seem to be -- you know, it is  
19 relevant and it's not burdensome. And you really did do a good  
20 job narrowing the disputes.

21 And you may have already done this. I mean, Mr. Blackman,  
22 you sort of -- I think you told me that those are the things  
23 you have produced.

24 **MR. BLACKMAN:** Yes, Your Honor. Well, we went -- when  
25 we went through, we were looking for similar products, products



1 that were applied to the skin that had a hypoallergenic claim  
2 or products that had similar ingredients. We turned over that  
3 information.

4 Our --

5 **THE COURT:** Okay. So if you did that, you did that.

6 **MR. BLACKMAN:** What I'm hearing is that we haven't had  
7 this conversation.

8 If they want to talk about a specific document or if they  
9 want to talk about a specific product, then come to us and say:  
10 Look, we think this shower gel is relevant or we didn't see any  
11 documents about this.

12 We haven't had that conversation because they've never  
13 come to us. They just --

14 **THE COURT:** Okay. Well, so then we're having the  
15 conversation now. And so the -- of the dozen products which  
16 are, you know, you said things applied to the skin -- and  
17 I guess from the plaintiff's perspective, you would see,  
18 well -- and, again, being familiar with Whole Foods as a  
19 consumer and, you know -- I -- although I tend to shop for the  
20 foods, not for the personal care products myself; but I'm,  
21 you know, generally, familiar with the marketing.

22 And so it may be that, you know, the plaintiffs might say:  
23 Well, we would have expected to see products like this on the  
24 disclosures that are, you know, compositionally equivalent or a  
25 product equivalent but without the claim. And it may be, given

1 how Whole Foods has marketed its products, it may be that there  
2 is nothing responsive.

3 But it seems that you could at least -- if there are  
4 things that you might have expected, Ms. Golan, that you  
5 haven't seen, it seems that you guys can at least start with  
6 having that conversation because you'll have (inaudible)  
7 whoever the person who knows, you know, the Rule 30(b)(6)  
8 person or whoever it is, the marketing person who kind of knows  
9 the landscape.

10 And that's -- you know, it may be somebody in mar- -- it  
11 may be, you know, again -- again, from my experience in  
12 pharmaceuticals, the marketing people are always a good place  
13 to start because they always had, you know, all those -- they  
14 had the spreadsheets; they had the slide decks; they had the  
15 marketing materials; and you could pretty easily do a zero/one.

16 And my guess is there may -- if, Mr. Blackman, you think  
17 that you've done the disclosures, there may not be anything  
18 else, but at least you can talk about it. So that's one;  
19 you know, what the plaintiffs expect that they didn't see. And  
20 so talk.

21 And then the second thing is, if there are redactions that  
22 you think -- and if there's a representation at that point,  
23 then the -- that the -- that everything has been produced that  
24 must be produced, then you're no longer looking at the  
25 redactions through the eye of: Stuff was kept from us, because

1 I can do -- I do accept the representations of counsel. When  
2 counsel tell -- when you tell me that you've done it, I accept  
3 it. I cannot -- I can do no more, unless there's some reason  
4 for me not to have that. And I have no reason in this case  
5 with these lawyers.

6 So then the second thing is, then the issue becomes, of  
7 the redactions you have, presumably marketing materials, these  
8 are so redacted as to not give me context and they're  
9 confusing. And you at least need to have that conversation.

10 But I think you should stage it first with the products  
11 conversation. Make sure you've got the universe. I bet you  
12 do. But if you don't, Mr. Blackman or Mr. Blaxter can go back  
13 to the client, confirm. I mean, I think they've -- you know,  
14 since they did the document production, they identified the  
15 documents, someone will know who can give the confirmation.  
16 And -- and I think that's the best I can do on this record.

17 But I think that -- I think that -- I think you can get a  
18 little bit more clarity from the plaintiff side, enough to  
19 reduce your concern that you're not getting stuff that helps  
20 you make the price premium analysis.

21 And then, after that, you guys can talk about what really  
22 is confusing that you might want to look at. You know, there  
23 are ways around that. You can, you know -- again, back to  
24 Whole Foods, it's how much do you really care about some of the  
25 redactions that they've identified as confusing because you've

1 addressed the landscape of insufficient disclosures.

2 Okay. That's what I sort of have time for today, unless  
3 there's anything else. I've got another calendar coming up,  
4 and I --

5 **MS. GOLAN:** Very briefly, Your Honor, I just want to  
6 make sure that we're on the same page as to the other products.

7 The example that we gave in our discovery letter -- it's  
8 the second image -- it has a certain product name. Right now  
9 this is marked as "Confidential," and I don't want to disclose  
10 anything that is (inaudible) confidential. But there, that  
11 redacts information about a product that I consider to be,  
12 you know, similar.

13 And --

14 **THE COURT:** Right. Well, I've said that I -- given  
15 that you have a pretty limited universe of products that are at  
16 issue in the litigation, that similar products, products  
17 applied to the skin, that are similar to the products that  
18 you've identified -- and we don't quibble over similarity  
19 between shower gel and bubble bath and bath foam or whatever --  
20 that I think that those are fairly within the universe of --  
21 you know, because of the price premium, those are fairly within  
22 the universe of what you might expect to be disclosed.

23 I believe Mr. Blackman said he believes they have been  
24 disclosed. But if there things that you would expect to see  
25 that you don't see, so -- you know, that is relevant and that

1 is disclosable. I'll try to write a very quick little order.

2 But otherwise, I think that generally the approach you  
3 need to take is: We would expect to see more and we don't.

4 So you need to say it.

5 And then after you resolve the, you know, similar product  
6 issue, you know, Mr. -- you saying, I -- in this redaction,  
7 you know, I see this; and if there are products that are like  
8 this, I want those.

9 I said that if they're similar, I think you should get  
10 those pursuant to a protective order. Mr. Blackman mostly said  
11 we did that.

12 But if he then says: Hey, they've got nothing to do with  
13 this at all -- and I'm going to accept it because that's -- I  
14 mean, I guess I could do some extremely modest, you know,  
15 confirm; but, you know, I prefer not to -- because, you know, I  
16 do, in disputes about redactions, I mean if you really are  
17 suspicious, although I suspect you won't be if you actually  
18 talked about it, I am willing to, you know, do a sample of  
19 documents just to confirm.

20 But, you know, you -- but I won't look at 1,500 documents.  
21 I'll look at, you know, a representative few if you really need  
22 me to.

23 But I think the lawyers on both sides of the case here are  
24 very good, and I do not think -- I think if you have the  
25 discussion about what you want and what you don't think that

1 you have, I'm confident that you won't need my intervention.  
2 But I'm happy to do it if you really need me to.

3 **MS. GOLAN:** Okay. Thank you, Your Honor.

4 **THE COURT:** Okay. All right. So, yeah, anything,  
5 Mr. Francis? It looks like you're about to say something.

6 (No response.)

7 **THE COURT:** No? Okay.

8 All right. So with that, everybody, I don't know. What  
9 else is happening? When am I going to see you more formally?  
10 I don't have the chart in front of me that -- I'm going to look  
11 up -- I'm at a bit of a disadvantage. You know, I have my very  
12 tidy little calendaring system.

13 **MR. BLACKMAN:** If I could just interject.

14 I think we've got a meet and confer set up for next --  
15 we're setting up for next week. I think the parties need to  
16 touch base on that, touch base on the issues we've discussed  
17 here today. We're probably going to need to adjust the case  
18 schedule because we don't want to jam plaintiff up on any of  
19 this.

20 So what I would think is --

21 **THE COURT:** Yeah. We've got a CMC, I think, that's on  
22 calendar --

23 **MR. BLACKMAN:** I think --

24 **THE COURT:** -- already for June 3rd.

25 Just we do have a -- is that right? No, that's old.

1 Sorry.

2 **MR. BLACKMAN:** I thought this was our last CMC on  
3 calendar until --

4 **THE COURT:** Let me just double-check. I'm going to go  
5 to June 3rd. My previous -- I might have adjusted it before --  
6 at one point we had one on for June 3rd. I'm just looking at  
7 my calendar. Just give me a second.

8 No, we no longer have it on calendar. So we can -- I'm  
9 just -- sorry. It's a little weird for me to be staring at my  
10 computer at the same time that we're...

11 We could put a touch -- so I like to have something -- it  
12 may be that our next date is actually a CMC/dispositive motion  
13 date. Let me just see.

14 I have a number of revised scheduling orders along the  
15 way. So I don't -- usually, I have a little binder, a case  
16 management binder, where I have the latest stuff tabbed, and I  
17 always adjust it.

18 So -- yeah, so I don't know, because we had previously  
19 talked about the class cert motion being in April.

20 **MS. GOLAN:** The most recent scheduling order --

21 **THE COURT:** Oh, there it is. I see it. I see it.

22 **MS. GOLAN:** Okay.

23 **THE COURT:** So we've still got time. So this was the  
24 CMC. Okay. You're right.

25 Well, it sounds like you guys are conferring next week.

1 And maybe what you should do, since you're conferring next  
2 week, is to -- you know, if you want to propose a different  
3 schedule, do that maybe within a week after your meet and  
4 confer. And -- does that make sense?

5 And then we can adjust things accordingly. And you can  
6 put in an interim -- you know, I like an interim CMC before  
7 we -- just because it gives us an opportunity to reconsider  
8 things. Right now your motion isn't due until July, and you  
9 haven't discussed what you think your schedule should be.

10 So it's -- I don't know why -- what's your proposal? Do  
11 you want to talk next week and then, if you want to propose  
12 something, propose something?

13 **MS. GOLAN:** I think that sounds like a good plan,  
14 Your Honor.

15 **THE COURT:** Okay. All right. That sounds fine. And  
16 just, you know I -- you know I like it in that nice, neat  
17 little chart form. So whatever you do, if you could propose it  
18 in chart form and then e-mail us a Word copy, that would be  
19 great.

20 Okay. All right. Thanks, you guys. I'll try to kick out  
21 a very small order. I might have an -- even tell -- give  
22 Elaine a couple sentences to just put on the minute order to  
23 kind of track what we talked about today.

24 And obviously, we did this -- we did a recording of this  
25 for you guys, just so you would have a record. Normally, I



1 don't do CMCs on the record; but in pandemic time and given a  
2 discovery dispute, we did press record here. So if you need a  
3 recording, you can get a transcription of it.

4 **MS. GOLAN:** Thank you, Your Honor.

5 **MR. FRANCIS:** Thank you, Your Honor.

6 **THE COURT:** Thanks, everybody.

7 Thanks, Elaine. We can end the calendar.

8 (Proceedings adjourned at 10:17 a.m.)

9 ---o0o---

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

I, ANA DUB, CSR NO. 7445, RDR, CRR, CCRR, CRG, CCG, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

DATE: Friday, February 12, 2021



---

Ana Dub, CSR No. 7445, RDR, CRR, CCRR, CRG, CCG